

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Andreas CADUFF, et al.

For: A DEVICE AND METHOD FOR MEASURING A PROPERTY OF LIVING TISSUE

the specification of which:

(check and complete (a), (b), or (c))

- (a) ☐ is attached hereto.
- (b) ☐ was filed on _____, as Application Serial No. _____ and was amended on _____ (if applicable).
- (c) ☒ was described and claimed in International Application No. PCT/CH2004/000077, filed on May 22, 2006 and as amended on _____ (if any).

**STATEMENT OF FACTS IN SUPPORT OF FILING
ON BEHALF OF NONSIGNING INVENTOR (37 CFR 1.47)**

NOTE: This statement as to the pertinent facts concerning the refusal of the nonsigning inventor to join in the application or where the nonsigning inventor cannot be found or reached must accompany the declaration signed on behalf of the nonsigning inventor by a joint inventor or by a legal representative who shows a proprietary interest. Where the entity with a proprietary interest executes the declaration on behalf of the nonsigning inventor there must also be a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage. 37 CFR 1.47(a) and (b).

This statement is made as to the exact facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the nonsigning inventor for the above identified patent application before deposit thereof in the Patent and Trademark Office.

(check next item, if applicable)

- ☐ Because signing on behalf of the nonsigning inventor is by a person or entity showing a sufficient proprietary interest, this statement also recites facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

This statement is being made by the available person having first-hand knowledge of the facts recited therein.

NOTE: The statement "must be signed, where at all possible, by a person having first-hand knowledge of the facts recited therein." MPEP § 409.03(d). If different persons have first-hand knowledge of different facts, then a declaration from each such person as to those facts he or she knows should be submitted separately.

NOTE: Copies of documentary evidence, such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions. M.P.E.P. § 409.03(d), 7th ed.

IDENTIFICATION OF PERSON MAKING THIS STATEMENT OF FACTS

(X) KURT SUTTER

Name of person making statement

(X) C/O E. BLUM & CO. AG, VORDERBERG 11,

Address of person making statement

8044 ZURICH, SWITZERLAND

**EFFORTS DURING CONVENTION YEAR TO PREPARE APPLICATION AND
OBTAIN INVENTOR'S SIGNATURE**

NOTE: In cases where priority under 35 U.S.C. § 119 is to be claimed, the 37 C.F.R. § 1.47 applicant should explain what efforts, if any were made during the Convention year to prepare the application and obtain the inventor's signature thereon. The period allowed by the Convention year should "be sufficient for the preparation and deposit of an application. . . in the form required by the rules." . . . Accordingly, 37 C.F.R. § 1.47 may not be used "to save the parties from the consequences of their delay." M.P.E.P. § 409.03(d), 7th ed.

(intentionally blank)

(use Supplemental Page(s), if necessary)

LAST KNOWN ADDRESS OF THE NONSIGNING INVENTOR

NOTE: MPEP, §409.03(e), 8th Edition:

"An application filed pursuant to 37 CFR 1.47 must state the last known address of the nonsigning inventor.

"That address should be the last known address at which the inventor customarily receives mail. See MPEP § 605.03. Ordinarily, the last known address will be the last known residence of the nonsigning inventor.

"Inasmuch as a nonsigning inventor is notified that an application pursuant to 37 CFR 1.47 has been filed on his or her behalf, other addresses at which the nonsigning inventor may be reached should also be given."

Pascal Truffer

Full name of nonsigning inventor

Bläsistrasse 9, CH-8049 Zurich, Switzerland

Last known address of nonsigning inventor

NOTE: Ordinarily, the last known address will be the last known address of the nonsigning inventor, but other addresses at which the nonsigning inventor may be reached should also be given in the space below. M.P.E.P. § 409.03(e), 6th ed.

DETAILS OF EFFORTS TO REACH NONSIGNING INVENTOR

NOTE: Complete either these facts or the facts as to REFUSAL OF NONSIGNING INVENTOR TO SIGN APPLICATION PAPERS or both, in applicable circumstances. The facts should include sending a COMPLETE COPY of the application (specification, claims, drawing, etc. AND Declaration) to the inventor at the last known address.

NOTE: "The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts. It is important that the statement contain facts as opposed to conclusions" MPEP, § 409.03(d), 8th Edition.

(intentionally blank)

(use Supplemental Page(s), if necessary)

DETAILS OF REFUSAL OF NONSIGNING INVENTOR TO SIGN APPLICATION PAPERS

NOTE: Complete either these facts or the facts as to DETAILS OF EFFORTS TO REACH NONSIGNING INVENTOR or both, in applicable circumstances. The facts should include sending a COMPLETE COPY of the application (specification, claims, drawing, etc. AND Declaration) to the inventor at the last known address.

NOTE: MPEP, § 409.03(d), 8th Edition:

"A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See MPEP § 106. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

"Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

"Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

"When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition."

(x) see attachment

(use Supplemental Page(s), if necessary)

**PROOF OF NEED TO PREVENT IRREPARABLE DAMAGE
OR PRESERVE THE RIGHTS OF THE PARTIES**

NOTE: This proof must be presented where the declaration is signed by a person with sufficient proprietary interest for the nonsigning inventor (37 CFR 1.47(b)), but is not a requirement when the person signing for the nonsigning inventor is a joint inventor. (37 CFR 1.47(a)).

If a statutory bar is involved, the act or publication which is believed to constitute the bar should be identified. If a claim for priority is involved, the prior application or applications should be identified.

A diligent effort to prepare the application and obtain the inventor's signature thereon must be made, even if the application is being filed to avoid a bar or to claim priority. MPEP § 409.03(g), 7th ed.

Irreparable damage may be established by showing that a filing date is necessary to (1) avoid a statutory bar or (2) make a claim for priority, which should identify the prior application(s) involved.

Preservation of the rights of the parties may be demonstrated by a showing that the nonsigning inventor may reasonably be expected to enter into competition with the person having a proprietary interest and signing on behalf of the nonsigning inventor or that a firm plan for commercialization of the subject matter of the application has been adopted.

MPEP § 409.03(g), 7th ed.

(intentionally blank)

*(if this proof is not needed and not being presented,
then draw a line through this page of the form.)*

(use Supplemental Page(s), if necessary)

Date: (X) July 20, 2007

(X) 
Signature of person making statement

~~10~~ Plus 10 Added Page(s)